SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 55

HOPKINS FEDERAL SAVINGS AND LOAN ASSOCIATION, ETC., ET AL., PETITIONERS,

vs.

PETER A. CLEARY, S. N. SCHAFER, AND H. F. IBACH, CONSTITUTING THE BANKING COMMISSION OF THE BANKING DEPARTMENT OF THE STATE OF WISCONSIN.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

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[fol. 1]

IN SUPREME COURT OF THE UNITED STATES

No. —

PETER A. CLEARY, S. N. SCHAFER, and H. F. IRACH, Constituting the Banking Commission of the Banking Department of the State of Wisconsin, Plaintiffs and Appellees

v.

HOPKINS STREET BUILDING AND LOAN ASSOCIATION, a Wisconsin Corporation; Edw. F. Maertz, N. F. Remmel, A. J. Kitzerow and R. J. Teske, as President, Vice-President, Secretary and Treasurer, Respectively, and Edw. F. Maertz, N. F. Remmel, A. J. Kitzerow, R. J. Teske, Ed. Kieckbusch, Arthur J. Techel, Chas. Hafemann, Jr., and Arthur H. Fluck, as Directors of said Hopkins Street Building and Loan Association, and their respective successors in office, Defendants and Appellants.

PETITION FOR APPEAL—Filed April 13, 1935

To the Chief Justice of the Supreme Court of the State of Wisconsin:

The Hopkins Federal Savings and Loan Association, a corporation organized and existing under and by virtue of the laws of the United States of America, by conversion of Hopkins Street Building and Loan Association, a Wisconsin corporation, Edw. F. Maertz, N. F. Remmel, A. J. Kitzerow and R. J. Teske, as Pres[illegible], Vice-President, Secretary and Treasurer, respectively, [illegible] Edw. F. Maertz, N. F. Remmel, A. J. Kitzerow, R. J. Teske, Ed. Kieckbusch, Arthur J. Techel, Chas. Hafemann, Jr., and Arthur H. Fluck, as Directors of said Hopkins Federal Savings and Loan Association, and their respective successors in office, your petitioners, defendants and appellants in the above [fol. 2] entitled cause, show by this petition, and the Assignment of Errors filed herewith, that in the records, proceedings and decision in this cause in the Supreme Court of the State of Wisconsin, the same being the highest court of the State of Wisconsin, and the decision therein being final, manifest error has occurred, greatly to the damage of your petitioners.

The case is one in which Peter A. Cleary, S. N. Schafer, and H. F. Ibach, constituting the Banking Commission of the Banking Department of the State of Wisconsin, plaintiffs and appellees in the above entitled cause, obtained a decision from this court declaring the conversion of petitioner association from Hopkins Street Building and Loan Association, a Wisconsin corporation, into Hopkins Federal Savings and Loan Association, a federal corporation, to be null, void and of no effect and petitioner association still to be a Wisconsin building and loan association subject to the jurisdiction of the Banking Commission of the State of Wisconsin. Such declaration was made notwithstanding that a charter as a corporation organized and existing under and by virtue of the laws of the United States of America had been issued to petitioner association by the Federal Home Loan Bank Board pursuant to authority vested in such Board by Section 5 of the Act of Congress approved June 13, 1933 (48 Stat. 128, 132), as amended, by the Act of Congress approved April 27, 1934 (48 Stat. 643, 646) after petitioners had complied with all the rules and regulations of the Federal Home Loan Bank Board pursuant to said Act of Congress, and with all the provisions and requirements of said Act of Congress, and in particular, with the requirements of paragraph (i) of Section 5 of said Act (48 Stat. 128, 134), as amended, which em-[fol. 3] powered any member of a federal home loan bank to convert itself into a federal savings and loan association. Such declaration was made also notwithstanding that petitioner association was a member of the Federal Home Loan Bank of Chicago. Pursuant to said decision, a writ of injunction issued, December 19, 1934, commanding petitioner association, its officers and directors, to operate petitioner association as a Wisconsin building and loan association under the laws of the State of Wisconsin and under the direction and jurisdiction of the Banking Commission of the State of Wisconsin, and enjoining and restraining petitioners from operating petitioner association as a federal savings and loan association.

As appears from the record and proceedings in this cause and the decision filed therein, there was drawn in question the validity of a statute of the United States, to-wit: Section 5 of the Act of Congress approved June 13, 1933 (48 Stat. 128, 132), as amended by the Act of Congress ap-

proved April 27, 1934 (48 Stat. 643, 645), and particularly paragraph (i) of Section 5 of said Act of Congress, as amended, and the decision in this cause of the Supreme Court of the State of Wisconsin, being a final decision of the highest court of said State, is against the validity of such statute of the United States. As appears from the record and proceedings in this cause and the decision filed therein, there was specifically set up and claimed by petitioners certain titles, rights, privileges and immunities under said statute of the United States and said decision in this cause denies such titles, rights, privileges and immunities claimed under said statute of the United States.

Said decision held that petitioner association originally [fol. 4] organized as a Wisconsin corporation under and by virtue of the laws of the State of Wisconsin, to wit: Chapter 215 of the Wisconsin Statutes, as amended, had no power, under such statute or under Article XI, Section 1 of the Constitution of said State, to divest itself of the corporate character derived from said sovereign State by accepting a charter from any other sovereign government to-wit: the government of the United States of America notwithstanding that under Section 2, Article VI of the Constitution of the United States said Act of Congress is the supreme law of the land. Such holding drew in question the validity of said Statute and the Constitution of the State of Wisconsin on the ground of their being repugnant to the Constitution and laws of the United States and is in favor of their validity.

The decision of the said Supreme Court of Wisconsin was made, rendered and filed on December 11, 1934, the writ of injunction pursuant to said decision issued December 19, 1934, and the final order denying the allowance of a petition for rehearing from said decision was made and entered on February 5, 1935.

Petitioners aver that the said statute of the United States, at the time of the institution of this action, had not expired by its own limitation, and was not altered or repealed by law.

That, therefore, in accordance with Section 237 (a) of the Judicial Code (U. S. C., Title 28, Sec. 344), and in accordance with the Revised Rules of the Supreme Court of the United States, your petitioners respectfully show this Court that the case is one in which, under the legislation

in force when the Act of Congress approved January 31, [fol. 5] 1928 (45 Stat. 54) was passed; to wit: under Section 237 (a) of the Judicial Code, a review could be had in the Supreme Court of the United States on a Writ of Error, as a matter of right.

The errors upon which your petitioners claim to be entitled to an appeal are more fully set out in the Assignment of Errors, filed herewith, pursuant to the Revised Rules of the Supreme Court of the United States; and there is likewise filed herewith as required by the Revised Rules of the Supreme Court of the United States, a statement as to the jurisdiction of the Supreme Court of the United States.

Wherefore, petitioners pray:

1. For the allowance of an appeal from the Supreme Court of the State of Wisconsin to the Supreme Court of the United States in order that said decision may be examined and reversed; the writ of injunction issued pursuant thereto may be quashed and the injunction dissolved;

2. That a transcript of the record, proceedings and papers in this cause be made and transmitted to the Supreme Court of the United States by the Clerk of the Supreme Court of the State of Wisconsin under his hand and the seal of the Supreme Court of the State of Wisconsin, pursuant to the Revised Rules of the Supreme Court of the United States;

3. That an order be entered fixing the amount of security for costs which petitioners shall furnish;

4. That upon proper security being furnished, all execution and other proceedings in this cause in the Supreme Court of the State of Wisconsin be stayed until the final determination of this cause upon this appeal to the Su- [fol. 6] preme Court of the United States.

B. F. Saltzstein, E. J. Gross, Attorneys for Petitioners. Emery J. Woodall, Lyman W. Sherwood, Of Counsel.

[fol. 7] [File endorsement omitted.]

[fol. 8] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

[File endorsement omitted.]

ORDER ALLOWING APPEAL—Filed April 13, 1935

Hopkins Federal Savings and Loan Association, a corporation organized and existing under and by virtue of the laws of the United States of America, by conversion of Hopkins Street Building and Loan Association, a Wisconsin corporation, Edw. F. Maertz, N. F. Remmel, A. J. Kitzerow and R. J. Teske, as President, Vice-President, Secretary and Treasurer, respectively, and Edw. F. Maertz, N. F. Remmel, A. J. Kitzerow, R. J. Teske, Ed. Kieckbusch, Arthur J. Techel, Chas. Hafemann, Jr., and Arthur H. Fluck, as Directors of said Hopkins Federal Savings and Loan Association, and their respective successors in office, the appellants in the above entitled cause, [fol. 9] and each of them having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled cause by the Supreme Court of the State of Wisconsin, on the 11th day of December, 1934, and from each and every part thereof, and having presented and filed their Petition for Appeal, Assignment of Errors and Prayer for Reversal, and Statement of Jurisdiction, pursuant to the statutes of the United States and Revised Rules of the Supreme Court of the United States in such case made and provided;

It is now hereby ordered that an appeal be, and the same is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of Wisconsin in the above entitled cause, as provided by law, and it is further ordered that the Clerk of the Supreme Court of the State of Wisconsin shall pursuant to the Revised Rules of the Supreme Court of the United States prepare and certify under his hand and the Seal of the Supreme Court of the State of Wisconsin a transcript of the record and all opinions delivered in this cause and transmit the same to the Supreme Court of the United States, so that the same shall be filed in the Supreme Court of the United States

pursuant to the Revised Rules of the Supreme Court of the United States by or before the return day.

And it is further ordered that the bond heretofore given (dated Feb. 8, 1935) by the said appellants shall stand as a good and sufficient supersedeas bond, in the sum of One Thousand ($1,000.00) Dollars, that said appellants shall prosecute said appeal to effect, and answer all damages and costs if they fail to make their plea good, and that such supersedeas bond, when filed and approved, shall stay all execution and other proceedings in this cause in the [fol. 10] Supreme Court of the State of Wisconsin until the final disposition of this cause by the Supreme Court of the United States.

Dated this 13th day of April, A. D. 1935.

Marvin B. Rosenberry, Chief Justice of the Supreme Court of the State of Wisconsin. (Seal Supreme Court of Wisconsin.)

[fol. 11] [File endorsement omitted.]

Original

[fol. 12] In Supreme Court of the United States

[Title omitted]

Assignment of Errors—Filed April 13, 1935

The Hopkins Federal Savings and Loan Association, a corporation organized and existing under and by virtue of the laws of the United States of America, by conversion of Hopkins Street Building and Loan Association, a Wisconsin corporation, Edw. F. Maertz, N. F. Remmel, A. J. Kitzerow and R. J. Teske, as President, Vice-President, Secretary and Treasurer, respectively, and Edw. F. Maertz, N. F. Remmel, A. J. Kitzerow, R. J. Teske, Ed. Kieckbusch, Arthur J. Techel, Chas. Hafemann, Jr., and Arthur H. Fluck, as Directors of said Hopkins Federal Savings and Loan Association, and their respective successors in office, [fol. 13] appellants herein, as required by Section 997 of the Revised Statutes (U. S. C., Title 28, Sec. 862) and in accordance with Rule 9 of the Revised Rules of the Supreme

Court of the United States, assign the following errors in the record and proceedings in the Supreme Court of the State of Wisconsin in the above entitled cause:

1. The Supreme Court of the State of Wisconsin under the law and evidence in this cause erred

(a) In determining

(i) That the conversion by appellant association into a federal savings and loan association was null, void and of no effect,

(ii) That appellant association was still a Wisconsin building and loan association, and

(iii) That appellant association was still subject to the jurisdiction of the Wisconsin Banking Commission;

(b) In commanding appellants to operate appellant association as a Wisconsin building and loan association under the direction and jurisdiction of Wisconsin Banking Commission; and

(c) In restraining and enjoining appellants from operating appellant association as a federal savings and loan association.

2. The Supreme Court of the State of Wisconsin erred under the pleadings in this cause in its decision and by its writ of injunction in holding Section 5 of the Home Owners' Loan Act of 1933 (48 Stat. 128, 132), as amended, and more particularly paragraph (i) of Section 5 of said Act, as amended (48 Stat. 643, 646), invalid under the Constitution of the United States of America.

3. The Supreme Court of the State of Wisconsin erred

[fol. 14] (a) In refusing in its decision to recognize and give effect to an Act of Congress validly enacted in the execution of the powers vested in the Federal Congress by the Constitution of the United States of America, to-wit, Home Owners' Loan Act of 1933 (48 Stat. 128, 132), as amended:

(b) By its writ of injunction, in retarding, impeding, burdening and controlling the operations of said Act of Congress; and

(c) In denying titles, rights, privileges and immunities of appellants specially set up and claimed by appellants under said Act of Congress.

4. The Supreme Court of the State of Wisconsin erred in holding Chapter 215 of the Statutes of Wisconsin, Section 1 of Article IX of the Constitution of the State of Wisconsin, valid as not repugnant to paragraph (i) of Section 5 of the Home Owners' Loan Act of 1933 (48 Stat. 128, 134), as amended by the Act of Congress approved April 27, 1934 (48 Stat. 643, 646), or to Section 2 of Article VI of the Constitution of the United States, which provides that the laws of the United States are the supreme law of the land. This is particularly true when the Supreme Court of the State of Wisconsin in said holding construed said State Statute and said section of the State Constitution as blocking the flow of power from the Congress of the United States under said Act of Congress, as amended, (48 Stat. 643, 646) to appellant association, so as to enable it to divest itself of its state charter and accept a charter from the sovereign Government of the United States by conversion when Wisconsin Statutes as was recognized in said decision of the Supreme Court of the State of Wisconsin,

(a) Were silent upon the subject of conversion, and

(b) Neither expressly prohibited conversion nor expressly empowered appellant association so to convert.

5. The Supreme Court of the State of Wisconsin erred in holding that paragraph (i) of Section 5 of the Home Owners' Loan Act of 1933 (48 Stat. 128, 134), as amended by Act of Congress approved April 27, 1934 (48 Stat. 643, 646), merely permitted Wisconsin associations to convert only if and when the legislature of the State of Wisconsin [fol. 15] enacted legislation consenting to such conversion, but did not empower conversion of appellant association without legislation of the State of Wisconsin consenting to such conversion.

Prayer for Reversal

For which errors, appellants pray

(1) That the decision of the Supreme Court of the State of Wisconsin filed December 11, 1934 in the above entitled cause be reversed,

(2) That the writ of injunction issued pursuant to said decision be quashed and the injunction be dissolved, and

(3) That a judgment be rendered in favor of appellants, and for costs.

B. F. Saltzstein, E. J. Gross, Attorneys for Petitioners. Emery J. Woodall, Lyman W. Sherwood, of Counsel.

[fols. 16-34] [File endorsement omitted.]

Service admitted this 13th day of April, 1935.
J. E. Finnegan, Atty. Gen.

[fols. 35-37] Citation in usual form showing service on Peter A. Cleary et al., filed April 15, 1935, omitted in printing.

[fols. 38-42] Bond on appeal for $1,000.00, approved Feb. 8, 1935, omitted in printing.

[fol. 43] [File endorsement omitted]

Original

In Supreme Court of United States

[Title omitted]

Præcipe for Transcript of Record—Filed April 13, 1935

To the Clerk of the Supreme Court of the State of Wisconsin:

Appellants in the above entitled cause hereby indicate the portions of the record to be incorporated in the transcript thereof as follows:

Notice of petition to Supreme Court of the State of Wisconsin for leave to institute an original action therein dated September 5, 1934.

Petition for leave to commence an original action verified September 5, 1934.

Order granting petition for leave to commence original action entered September 14, 1934.

[fol. 44] Answer filed September 29, 1934.

Decision filed December 11, 1934.

Writ of injunction issued December 19, 1934.

Motion for rehearing filed December 19, 1934.

Order denying motion for rehearing entered February 5, 1935.

B. F. Saltzstein, E. J. Gross, Attorneys for Petitioners. Emery J. Woodall, Lyman W. Sherwood, of Counsel.

[fol. 45] [File endorsement omitted.]

[fol. 46] [Caption omitted.]

[fol. 47] [File endorsement omitted]

IN SUPREME COURT OF WISCONSIN

[Title omitted]

NOTICE OF MOTION FOR LEAVE TO INSTITUTE ORIGINAL ACTION —Filed Sept. 13, 1934

To the Defendants Above Named:

Please take notice, that upon the verified petition hereunto annexed, the above named plaintiffs, by their attorneys, will apply for leave of this Honorable Court to institute an original action herein, on Friday, September 14, 1934 before the Supreme Court, State Capitol, Madison, Wisconsin.

Dated this 5th day of September, 1934.

J. E. Finnegan, Attorney General, John E. Martin, Assistant Attorney General, Attorneys for Plaintiffs. Benjamin Poss, of Counsel.

7/42/34. Omitted service.

[fol. 48] [File endorsement omitted]

IN SUPREME COURT OF WISCONSIN

[Title omitted]

PETITION FOR LEAVE TO COMMENCE AN ORIGINAL ACTION—Filed Sept. 13, 1934

To the Honorable the Supreme Court of the State of Wisconsin:

The petition of the above named plaintiffs respectfully alleges the following:

1. Your petitioners Peter A. Cleary, S. N. Schafer, and H. F. Ibach, constitute the Banking Commission of the Banking Department of the State of Wisconsin created under and by virtue of the provisions of Chapter 220 of the Wisconsin statutes. Pursuant to the provisions of Chapter 215 of the Wisconsin statutes said Banking Commission is vested with the control and supervision of all building and loan associations organized under the laws of the State of Wisconsin or other similar laws, or author-[fol. 49] ized to transact business in the State of Wisconsin.

2. Hopkins Street Building and Loan Association was organized as a building and loan association under and by virtue of the laws of the State of Wisconsin in the year 1925. Thereafter it conducted its business as a state building and loan association in the City and County of Milwaukee and State of Wisconsin.

3. As petitioners are informed and believe Edw. F. Maertz, N. F. Remmel, A. J. Kitzerow and R. J. Teske were the duly elected, qualified and acting President, Vice-President, Secretary and Treasurer, respectively, and Edw. F. Maertz, N. F. Remmel, A. J. Kitzerow, R. J. Teske, Ed. Kieckbusch, Arthur J. Techel, Chas. Hafemann, Jr., and Arthur H. Fluck, the duly elected, qualified, and acting Directors of said Hopkins Street Building and Loan Association at the time said Association applied to the Federal Home Loan Bank Board for permission to convert itself into a Federal Savings and Loan Association, as hereinafter set forth.

4. On or about July 22, 1932, the Congress of the United States of America enacted the Federal Home Loan Bank Act which created Federal Home Loan Banks throughout the United States (12 U. S. C. A., 1933 Supplement, page 186 et seq.). By virtue of the provisions of said Act, state building and loan associations among others were eligible to become members of and borrowers from a Federal Home Loan Bank. By the enactment of Sec. 215.08 of the Wisconsin statutes on July 10, 1933, the legislature of the State of Wisconsin authorized Wisconsin building and loan associations, with the approval of the Commissioner of Banking, to become members of and borrowers from a Federal Home Loan Bank.

[fol. 50] 5. Pursuant to the enactments mentioned in above paragraph designated "4" and with the consent and approval of the Banking Department of the State of Wisconsin the said Hopkins Street Building and Loan Association became a member of the Federal Home Loan Bank of Chicago, a bank established under the Federal Home Loan Bank Act.

6. On or about June 13, 1933, the Congress of the United States of America enacted the Home Owners' Loan Act of 1933, (12 U. S. C. A. 1933 Supp. page 199 et seq.), a copy of which as amended to date is annexed hereto marked Exhibit "A" and made a part hereof. By Section 5 of said Act (12 U. S. C. A. Sec. 1464) the Federal Home Loan Bank Board was authorized among other things to provide for the organization of associations to be known as Federal savings and loan associations and to issue charters therefor. Sec. 5 (i) of said Act originally provided as follows:

"Any member of a Federal Home Loan Bank may convert itself into a Federal Savings and Loan Association under this Act upon a vote of its stockholders as provided by the law under which it operates; but such conversion shall be subject to such rules and regulations as the Board may prescribe, and thereafter the converted association shall be entitled to all the benefits of this section and shall be subject to examination and regulation to the same extent as other associations incorporated pursuant to this act."

On April 27, 1934, said Sec. 5 (i) was amended to read as follows:

"Any member of the Federal Home Loan Bank may convert itself into a Federal Savings and Loan Association under this Act upon a vote of 51 per centum or more of the votes cast at a legal meeting called to consider such action; but such conversion shall be subject to such rules and regulations as the Board may prescribe, and thereafter the converted association shall be entitled to all the benefits of this section and shall be subject to examination and regulation to the same extent as other associations incorporated pursuant to this Act."

[fol. 51] 7. The said Hopkins Street Building and Loan Association made application in the month of May, 1934, without the consent or authority of the Banking Commission of the State of Wisconsin, to the Federal Home Loan Bank Board for permission to convert itself into a federal savings and loan association under the provisions of Sec. 5 (i) of the Federal Home Owners' Loan Act of 1933 as amended. Said Board granted said permission to the Hopkins Street Building and Loan Association and thereafter the said association proceeded in the manner provided by the rules and regulations prescribed by said Board and on June 2, 1934, a charter was issued by said Board to said association purporting to authorize it to operate as a federal savings and loan association under the name of Hopkins Federal Savings and Loan Association.

8. Said attempted conversion by said Hopkins Street Building and Loan Association into a federal savings and loan association and all steps taken in connection therewith were without consent or authority and over the protests of the Banking Commission of the State of Wisconsin.

9. As petitioners are informed and believe, the United States of America has no right or power to create federal savings and loan associations; that the provisions of Sec. 5 of the Home Owners' Loan Act of 1933 as amended, purporting to authorize the creation of said federal savings and loan associations, are unconstitutional in that Congress has no express or implied power to create such associations; that the creation of said associations is wholly out-

side the powers vested in Congress by Section 8 of Article I of the Constitution or any other provision of the Constitution of the United States and is in violation of Article [fol. 52] X of the Amendments to the Constitution of the United States.

10. As petitioners are informed and believe, the provisions of Sec. 5 (a) of said Home Owners' Loan Act of 1933, as amended, which purport to delegate to the Federal Home Loan Bank Board the power and authority "under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation, of associations to be known as 'Federal Savings and Loan Associations', and to issue charters therefor" is an unconstitutional delegation of the legislative power by the Congress of the United States in violation of Section 1 of Article I of the Constitution of the United States.

11. As petitioners are informed and believe, the said Hopkins Street Building and Loan Association has and had no right or power to convert itself into a federal savings and loan association; that such conversion is in violation of its charter and the laws of the State of Wisconsin; that the provisions of Sec. 5 (i) of the Home Owners' Loan Act of 1933, as amended, if construed to authorize said conversion without the consent of or in violation of the laws of the State of Wisconsin, are void and of no effect and in violation of the Constitution of the United States because Congress has no right or power under the Constitution of the United States to authorize the conversion of a state building and loan association into a federal savings and loan association contrary to the laws of the State of Wisconsin or without legislation of the State of Wisconsin consenting to such conversion; that said Sec. 5 (i), if construed to permit said conversion without state con- [fol. 53] sent, is unconstitutional in that Congress has no express or implied power to authorize such conversion under the provisions of Sec. 8 of Article I of the Constitution of the United States, or any other provision of the Federal Constitution, and is in violation of Article X of the Amendments to the Constitution of the United States.

12. As petitioners are informed and believe, there are stockholders of the said association who do not desire the

said association to convert and that the provisions of said Sec. 5 (i) deny to all stockholders of the said association who do not desire to convert the equal protection of the laws and deprive them of property without due process of law, in violation of Sec. 1 of Article XIV of the Amendments to the Constitution of the United States.

13. Since said June 2, 1934, the said Hopkins Street Building and Loan Association has held itself out to the public as a federal association. Said association, its officers and directors, have refused to recognize any right or jurisdiction over the association and have contended, and still contend, that the provisions of Chapter 215 of the Wisconsin statutes are no longer applicable to it and that they need not obey any request or demand of the Banking Department of the State of Wisconsin.

14. Your petitioners further represent that the controversy set forth herein involves a matter publici juris. It affects the sovereignty of the State and its franchises or prerogatives; that other building and loan associations organized and existing under the laws of the State of Wisconsin are contemplating or taking steps toward conversion; that in consequence a speedy and final determination of the questions involved herein is necessary and the remedy in the Circuit Courts of this State is inadequate.

Your petitioners respectfully pray that this Honorable [fol. 54] Court grant leave to them to institute an original proceeding in this Court in which the Banking Commission of the State of Wisconsin will be plaintiff and the Hopkins Street Building and Loan Association, its officers and directors will be the defendants, for the purpose of granting to your petitioners judgment as follows:

(1) Declaring said attempted conversion by said Hopkins Street Building and Loan Association to be null, void and of no effect.

(2) Declaring that said association is under the jurisdiction of the Banking Commission of the State of Wisconsin as provided by statute.

(3) Compelling the officers and directors of said association to operate said association as a Wisconsin building and loan association or to wind up its affairs as such associa-

tion in the manner provided by the statutes of the State of Wisconsin.

(4) Restraining and enjoining said association, its officers and directors, from operating as a federal savings and loan association.

(5) And for such other and further relief as may be just and equitable in the premises.

Respectfully submitted,
The Banking Commission of the State of Wisconsin.
By: Peter A. Cleary, Chairman.

[fol. 55] *Duly sworn to by Peter A. Cleary. Jurat omitted in printing.*

[fol. 56] EXHIBIT "A" TO PETITION

Home Owners' Loan Corporation, Washington, D. C.

Home Owners' Loan Act of 1933 as Amended and other Laws Pertaining to the Home Owners' Loan Corporation—May, 1934

[fol. 57] This pamphlet contains the Home Owners' Loan Act of 1933, as amended. The amendments are printed in bold-face type and are identified in footnotes. There are also set forth in the footnotes the superseded portions of the original act. Provisions of other laws pertaining to the Home Owners' Loan Corporation are printed in an appendix. For easy reference an index is appended.

[fol. 58] (Reprinted with index for Home Owners' Loan Corporation)

Home Owners' Loan Act of 1933 as Amended[1]

[Public, No. 43—73d Congress]
[H. R. 5240]

An Act to provide emergency relief with respect to home mortgage indebtedness, to refinance home mortgages, to extend relief to the owners of homes occupied by them

[1] As amended by an Act to guarantee the bonds of the Home Owners' Loan Corporation, to amend the Home Owners' Loan Act of 1933, and for other purposes. [Public, No. 178—73d Congress.] [S—2999.] Approved April 27, 1934.

and who are unable to amortize their debt elsewhere, to amend the Federal Home Loan Bank Act, to increase the market for obligations of the United States and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Home Owners' Loan Act of 1933."

Definitions

Sec. 2. As used in this Act—

(a) The term "Board" means the Federal Home Loan Bank Board created under the Federal Home Loan Bank Act.

(b) The term "Corporation" means the Home Owners' Loan Corporation created under section 4 of this Act.

(c) The term "home mortgage" means a first mortgage on real estate in fee simple or on a leasehold under a renewable lease for not less than ninety-nine years, upon which there is located a dwelling for not more than four families, used by the owner as a home or held by him as his homestead, and having a value not exceeding $20,000; and the term "first mortgage" includes such classes of first liens as are commonly given to secure advances on real estate under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby.

(d) The term "association" means a Federal Savings and Loan Association chartered by the Board as provided in section 5 of this Act.

Repeal of Direct Loan Provision of Federal Home Loan Bank Act

Sec. 3. Subsection (d) of section 4 of the Federal Home Loan Bank Act (providing for direct loans to home owners) is hereby repealed.

Creation of Home Owners' Loan Corporation

Sec. 4. (a) The Board is hereby authorized and directed to create a corporation to be known as the Home Owners'

Loan Corporation, which shall be an instrumentality of the United States, which shall have authority to sue and to be [fol. 59] sued in any court of competent jurisdiction, Federal or State, and which shall be under the direction of the Board and operated by it under such bylaws, rules, and regulations as it may prescribe for the accomplishment of the purposes and intent of this section. The members of the Board shall constitute the board of directors of the Corporation and shall serve as such directors without additional compensation.

(b) The Board shall determine the minimum amount of capital stock of the Corporation and is authorized to increase such capital stock from time to time in such amounts as may be necessary, but not to exceed in the aggregate $200,000,000. Such stock shall be subscribed for by the Secretary of the Treasury on behalf of the United States, and payments for such subscriptions shall be subject to call in whole or in part by the Board and shall be made at such time or times as the Secretary of the Treasury deems advisable. The Corporation shall issue to the Secretary of the Treasury receipts for payments by him for or on account of such stock, and such receipts shall be evidence of the stock ownership of the United States. In order to enable the Secretary of the Treasury to make such payments when called, the Reconstruction Finance Corporation is authorized and directed to allocate and make available to the Secretary of the Treasury the sum of $200,000,000, or so much thereof as may be necessary, and for such purpose the amount of the notes, bonds, debentures, or other such obligations which the Reconstruction Finance Corporation is authorized and empowered under section 9 of the Reconstruction Finance Corporation Act, as amended, to have outstanding at any one time, is hereby increased by such amounts as may be necessary.

(c) (1) The Corporation is authorized to issue bonds in an aggregate amount not to exceed $2,000,000,000, which may be sold by the Corporation to obtain funds for carrying out the purposes of this section, or exchanged as hereinafter provided. Such bonds shall be in such forms and denominations, shall mature within such periods of not more than eighteen years from the date of their issue, shall

bear such rates of interest not exceeding 4 per centum per annum, shall be subject to such terms and conditions, and shall be issued in such manner and sold at such prices, as may be prescribed by the Corporation, with the approval of the Secretary of the Treasury. Such bonds shall be fully and unconditionally guaranteed both as to interest and principal by the United States, and such guaranty shall be expressed on the face thereof, and such bonds shall be lawful investments, and may be accepted as security, for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof. In the event that the Corporation shall be unable to pay upon demand, when due, the principal of, or interest on, such bonds, the Secretary of the Treasury shall pay to the holder the amount thereof which is hereby authorized to be appropriated out of any moneys in the Treasury not otherwise appropriated, and thereupon to the extent of the amount so paid the Secretary of the Treasury shall succeed to all the rights of the holders of such bonds. The Secretary of the Treasury, in his discretion, is authorized to purchase any bonds of the Corporation issued under this subsection which are guaranteed as to interest and principal, and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds from the sale of any [fol. 60] securities hereafter issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of the Corporation's bonds hereunder. The Secretary of the Treasury may, at any time, sell any of the bonds of the Corporation acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of the bonds of the Corporation shall be treated as public-debt transactions of the United States. The bonds issued by the Corporation under this subsection shall be exempt, both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any District, Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority. The Corporation, including its franchise, its capital, reserves and surplus, and its loans and income,

shall likewise be exempt from such taxation; except that any real property of the Corporation shall be subject to taxation to the same extent, according to its value, as other real property is taxed. No such bonds shall be issued in excess of the assets of the Corporation, including the assets to be obtained from the proceeds of such bonds, but a failure to comply with this provision shall not invalidate the bonds or the guaranty of the same. The Corporation shall have power to purchase in the open market at any time and at any price not to exceed par any of the bonds issued by it. Any such bonds so purchased may, with the approval of the Secretary of the Treasury, be sold or resold at any time and at any price. For a period of six months after the date this subsection, as amended, takes effect, the Corporation is authorized to refund any of its bonds issued prior to such date or any bonds issued after such date in compliance with commitments of the Corporation outstanding on such date, upon application of the holders thereof, by exchanging therefor bonds of an equal face amount issued by the Corporation under this subsection as amended, and bearing interest at such rate as may be prescribed by the Corporation with the approval of the Secretary of the Treasury; but such rate shall not be less than that first fixed after this subsection, as amended, takes effect on bonds exchanged by the Corporation for home mortgages. For the purpose of such refunding the Corporation is further authorized to increase its total bond issue in an amount equal to the amount of the bonds so refunded. Nothing in this subsection, as amended, shall be construed to prevent the Corporation from issuing bonds in compliance with commitments of the Corporation on the date this subsection, as amended, takes effect.[2]

(c) (2) The amendments made by subsection (c) (1) of this section (except with respect to refunding) shall not apply to any bonds heretofore issued by the Home Owners' Loan Corporation under such section 4 (c), or to any bonds hereafter issued in compliance with commitments of the

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[2] As amended by section 1 (a) of An Act to Guarantee the Bonds of the Home Owners' Loan Corporation.

Corporation outstanding on the date of enactment of this Act.[3]

[fol. 61] (d) The Corporation is authorized, for a period of three years after the date of enactment of this Act, (1)

[3] This division of subsection (c) is new and was added by section 1 (b) of An Act to Guarantee the Bonds of the Home Owners' Loan Corporation. Section 4 (c) of Home Owners' Loan Act of 1933, read formerly as follows:

"The Corporation is authorized to issue bonds in an aggregate amount not to exceed $2,000,000,000, which may be sold by the Corporation to obtain funds for carrying out the purposes of this section, or exchanged as hereinafter provided. Such bonds shall be issued in such denominations as the Board shall prescribe, shall mature within a period of not more than eighteen years from the date of their issue, shall bear interest at a rate not to exceed 4 per centum per annum, and shall be fully and unconditionally guaranteed as to interest only by the United States, and such guaranty shall be expressed on the face thereof. In the event that the Corporation shall be unable to pay upon demand, when due, the interest on any such bonds, the Secretary of the Treasury shall pay to the Corporation the amount of such interest, which is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated, and the Corporation shall pay the amount of such interest to the holders of the bonds. Upon the payment of such interest by the Secretary of the Treasury the amount so paid shall become an obligation to the United States of the Corporation and shall bear interest at the same rate as that borne by the bonds upon which the interest has been so paid. The bonds issued by the corporation under this subsection shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any District, Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority. The Corporation, including its franchise, its capital, reserves and surplus, and its loans and income, shall likewise be exempt from such taxation; except that any real property of the Corporation shall be subject to taxation to the same extent, according to its value, as other real property is taxed."

to acquire in exchange for bonds issued by it, home mortgages and other obligations and liens secured by real estate (including the interest of a vendor under a purchase-money mortgage or contract) recorded or filed in the proper office or executed prior to the date of the enactment of this Act, and (2) in connection with any such exchange, to make advances in cash to pay the taxes and assessments on the real estate, to provide for necessary maintenance and make necessary repairs, to meet the incidental expenses of the transaction, and to pay such amounts, not exceeding $50, to the holder of the mortgage, obligation, or lien acquired as may be the difference between the face value of the bonds exchanged plus accrued interest thereon and the purchase price of the mortgage, obligation, or lien. The face value of the bonds so exchanged plus accrued interest thereon and the cash so advanced shall not exceed in any case $14,000, or 80 percentum of the value of the real estate as determined by an appraisal made by the Corporation, whichever is the smaller. In any case in which the amount of the face value of the bonds exchanged plus accrued interest thereon and the cash advanced is less than the amount the home owner owes with respect to the home mortgage or other obligation or lien so acquired by the Corporation, the Corporation shall credit the difference between such amounts to the home owner and shall reduce the amount owed by the home owner to the Corporation to that extent. Each home mortgage or other obligation or lien so acquired shall be carried as a first lien or refinanced as a home mortgage by the Corporation on the basis of the price paid therefor by the Corporation, and shall be amortized by means of monthly payments sufficient to retire the interest and principal within a period of not to exceed fifteen years; but the amortization payments of any home owner may be made quarterly, semiannually, or annually, if in the judgment of the Corporation the situation of the home owner requires it. Interest on the unpaid balance of the obligation of the home owner to the Corporation shall be at a rate not exceeding 5 per centum per annum. The Corporation may at any time grant an extension of time to any home owner for the payment of any installment of principal or interest owed by him to the Corporation if, in the judgment of the Corporation, the circumstances of the home owner and the condition of the

security justify such extension. As used in this subsection, the term "real estate" includes only real estate held in fee simple or on a leasehold under a lease renewable for not less than ninety-nine years, upon which there is located a [fol. 62] dwelling for not more than four families used by the owner as a home or held by him as a homestead and having a value not exceeding $20,000. No discrimination shall be made under this Act against any home mortgage by reason of the fact that the real estate securing such mortgage is located in a municipality, county, or taxing district which is in default upon any of its obligations.[4]

(e) The Corporation is further authorized, for a period of three years from the date of enactment of this Act, to make loans in cash subject to the same limitations and for the same purposes for which cash advances may be made under subsection (d) of this section, in cases where the property is not otherwise encumbered; but no such loan shall exceed 50 per centum of the value of the property securing the same as determined upon an appraisal made by the Corporation. Each such loan shall be secured by a duly recorded home mortgage, and shall bear interest at the same rate and shall be subject to the same provisions with respect to amortization and extensions as are applicable in the case of obligations refinanced under subsection (d) of this section.

(f) The Corporation is further authorized, for a period of three years from the date of enactment of this Act, in any case in which the holder of a home mortgage or other obligation or lien elgible for exchange under subsection (d) of this section does not accept the bonds of the Corporation in exchange as provided in such subsection and in which the Corporation finds that the home owner cannot obtain a loan from ordinary lending agencies, to make cash advances to such home owner in an amount not to exceed

[4] As amended by section 3 of An Act to Guarantee the Bonds of the Home Owners' Loan Corporation, deleting from the sixth sentence of the Home Owners' Loan Act of 1933, the words, "and no payment of any installment of principal shall be required during the period of three years from the date this Act takes effect if the home owner shall not be in default with respect to any other condition or covenant of his mortgage."

40 per centum of the value of the property for the purposes specified in such subsection (d). Each such loan shall be secured by a duly recorded home mortgage and shall bear interest at a rate of interest which shall be uniform throughout the United States, but which in no event shall exceed a rate of 6 per centum per annum, and shall be subject to the same provisions with respect to amortization and extensions as are applicable in cases of obligations refinanced under subsection (d) of this section.

(g) The Corporation is further authorized to exchange bonds and to advance cash to redeem or recover homes lost by the owners by foreclosure or forced sale by a trustee under a deed of trust or under power of attorney, or by voluntary surrender to the mortgagee subsequent to January 1, 1930, subject to the limitations provided in subsection (d) of this section.[5]

(h) The Board shall make rules for the appraisal of the property on which loans are made under this section so as to accomplish the purposes of this Act.

[fol. 63] (i) Any person indebted to the Corporation may make payment to it in part or in full by delivery to it of its bonds which shall be accepted for such purpose at face value.

(j) The Corporation shall have power to select, employ, and fix the compensation of such officer, employees, attorneys, or agents as shall be necessary for the performance of its duties under this Act, without regard to the provi-

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[5] As amended by Section 4 of An Act to Guarantee the Bonds of the Home Owners' Loan Corporation. Section 4 (g) of Home Owners' Loan Act of 1933, read formerly as follows:

"The Corporation is further authorized, for a period of three years from the date of the enactment of this Act, to exchange bonds and to advance cash, subject to the limitations provided in subsection (d) of this section, to redeem or recover homes lost by the owners by foreclosure or forced sale by a trustee under a deed of trust or under power of attorney, or by voluntary surrender to the mortgagee within two years prior to such exchange or advance."

sions of other laws applicable to the employment or compensation of officers, employees, attorneys, or agents of the United States. No such officer, employee, attorney, or agent shall be paid compensation at a rate in excess of the rate provided by law in the case of the members of the Board. The Corporation shall be entitled to the free use of the United States mails for its official business in the same manner as the executive departments of the Government, and shall determine its necessary expenditures under this Act and the manner in which they shall be incurred, allowed, and paid, without regard to the provisions of any other law governing the expenditure of public funds. The Corporation shall pay such proportion of the salary and expenses of the members of the Board and of its officers and employees as the Board may determine to be equitable, and may use the facilities of Federal Home Loan Banks, upon making reasonable compensation therefor as determined by the Board.

(k) The Board is authorized to make such bylaws, rules and regulations, not inconsistent with the provisions of this section, as may be necessary for the proper conduct of the affairs of the Corporation. The Corporation is further authorized and directed to retire and cancel the bonds and stock of the Corporation as rapidly as the resources of the Corporation will permit. All payments upon principal of loans made by the Corporation shall under regulations made by the Corporation be applied to the retirement of the bonds of the Corporation. Upon the retirement of such stock, the reasonable value thereof as determined by the Board shall be paid into the Treasury of the United States and the receipts issued therefor shall be canceled. The Board shall proceed to liquidate the Corporation when its purposes have been accomplished, and shall pay any surplus or accomulated funds into the Treasury of the United States. The Corporation may declare and pay such dividends to the United States as may be earned and as in the judgment of the Board it is proper for the Corporation to pay.[6]

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[6] The third sentence of subsection (k) is new and was added by section 13 of An Act to Guarantee the Bonds of the Home Owners' Loan Corporation.

(l) No home mortgage or other obligation or lien shall be acquired by the Corporation under subsection (d), and no cash advance shall be made under subsection (f), unless the applicant was in involuntary default on June 13, 1933, with respect to the indebtedness on his real estate and is unable to carry or refund his present mortgage indebtedness: Provided, That the foregoing limitation shall not apply in any case in which it is specifically shown to the satisfaction of the Corporation that a default after such date was due to unemployment or to economic conditions or misfortune beyond the control of the applicant, or in any case in which the home mortgage or other obligation or lien is held by an institution which is in liquidation.[7]

[fol. 64] (m) In all cases where the Corporation is authorized to advance cash to provide for necessary maintenance and to make necessary repairs it is also authorized to advance cash or exchange bonds for the rehabilitation, modernization, rebuilding and enlargement of the homes financed; and in all cases where the Corporation has acquired a home mortgage or other obligation or lien it is authorized to advance cash or exchange bonds to provide for the maintenance, repair, rehabilitation, modernization, rebuilding, and enlargement of the homes financed and to take an additional lien, mortgage, or conveyance to secure such additional advance or to take a new home mortgage for the whole indebtedness; but the total amount advanced shall in no case exceed the respective amounts or percentages of value of the real estate as elsewhere provided in this section. Not to exceed $200,000,000 of the proceeds derived from the sale of bonds of the Corporation shall be used in making cash advances to provide for necessary maintenance and necessary repairs and for the rehabilitation, modernization, rebuilding and enlargement of real estate securing the home mortgages and other obligations and liens acquired by the Corporation under this section.[8]

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[7] Subsection (l) is new and was added by section 2 of An Act to Guarantee the Bonds of the Home Owners' Loan Corporation.

[8] Subsection (m) is new and was added by section 2 of An Act to Guarantee the Bonds of the Home Owners' Loan Corporation.

Federal Savings and Loan Associations

SEC. 5. (a) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as "Federal Savings and Loan Associations", and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States.

(b) Such associations shall raise their capital only in the form of payments on such shares as are authorized in their charter, which shares may be retired as is therein provided. No deposits shall be accepted and no certificates of indebtedness shall be issued except for such borrowed money as may be authorized by regulations of the Board.

(c) Such associations shall lend their funds only on the security of their shares or on the security of first liens upon homes or combination of homes and business property within fifty miles of their home office: Provided, That not more than $20,000 shall be loaned on the security of a first lien upon any one such property; except that not exceeding 15 per centum of the assets of such association may be loaned on other improved real estate without regard to said $20,000 limitation, and without regard to said fifty-mile limit, but secured by first lien thereon: And provided further, That any portion of the assets of such associations may be invested in obligations of the United States or the stock or bonds of a Federal Home Loan Bank.

(d) The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such associa-
[fol. 65] tion, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation.

(e) No charter shall be granted except to persons of good character and responsibility, nor unless in the judgment of

the Board a necessity exists for such an institution in the community to be served, nor unless there is a reasonable probability of its usefulness and success, nor unless the same can be established without undue injury to properly conducted existing local thrift and home-financing institutions.

(f) Each such association, upon its incorporation, shall become automatically a member of the Federal Home Loan Bank of the district in which it is located, or if convenient shall require and the Board approve, shall become a member of a Federal Home Loan Bank of an adjoining district. Such associations shall qualify for such membership in the manner provided in the Federal Home Loan Bank Act with respect to other members.

(g) The Secretary of the Treasury is authorized on behalf of the United States to subscribe for preferred shares in such associations which shall be preferred as to the assets of the association and which shall be entitled to a dividend, if earned, after payment of expenses and provision for reasonable reserves, to the same extent as other shareholders. It shall be the duty of the Secretary of the Treasury to subscribe for such preferred shares upon the request of the Board; but the subscription by him to the shares of any one association shall not exceed $100,000, and no such subscription shall be called for unless in the judgment of the Board the funds are necessary for the encouragement of local home financing in the community to be served and for the reasonable financing of homes in such community. Payment on such shares may be called from time to time by the association, subject to the approval of the Board and the Secretary of the Treasury; but the amount paid in by the Secretary of the Treasury shall at no time exceed the amount paid in by all other shareholders, and the aggregate amount of shares held by the Secretary of the Treasury shall not exceed at any time the aggregate amount of shares held by all other shareholders. To enable the Secretary of the Treasury to make such subscriptions when called there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $100,000,000, to be immediately available and to remain available until expended. Each such association shall issue receipts for such payments by the Secretary.

of the Treasury in such form as may be approved by the Board, and such receipts shall be evidence of the interest of the United States in such preferred shares to the extent of the amount so paid. Each such association shall make provision for the retirement of its preferred shares held by the Secretary of the Treasury, and beginning at the expiration of five years from the time of the investment in such shares, the association shall set aside one third of the receipts from its investing and borrowing shareholders to be used for the purposes of such retirement. In case of the liquidation of any such association the shares held by the Secretary of the Treasury shall be retired at par before any payments are made to other shareholders.

[fol. 66] (h) Such associations, including their franchises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States, and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local or mutual or cooperative thrift and home financing institutions.

(i) Any member of the Federal Home Loan Bank may convert itself into a Federal Savings and Loan Association under this Act upon a vote of 51 per centum or more of the votes cast at a legal meeting called to consider such action; but such conversion shall be subject to such rules and regulations as the Board may prescribe, and thereafter the converted association shall be entitled to all the benefits of this section and shall be subject to examination and regulation to the same extent as other associations incorporated pursuant to this Act.[9]

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[9]As amended by section 6 of An Act to Guarantee the Bonds of the Home Owners' Loan Corporation. Section 5 (i) read formerly as follows:

"Any member of a Federal Home Loan Bank may convert itself into a Federal Savings and Loan Association under this Act upon a vote of its stockholders as provided

(j) In addition to the authority to subscribe for preferred shares in Federal Savings and Loan Associations, the Secretary of the Treasury is authorized on behalf of the United States to subscribe for any amount of full paid income shares in such associations, and it shall be the duty of the Secretary of the Treasury to subscribe for such full paid income shares upon the request of the Federal Home Loan Bank Board. Payment on such shares may be called from time to time by the association, subject to the approval of said Board and the Secretary of the Treasury, and such payments shall be made from the funds appropriated pursuant to subsection (g) of this section; but the amount paid in by the Secretary of the Treasury for shares under this subsection and such subsection (g), together shall at no time exceed 75 per centum of the total investment in the shares of such association by the Secretary of the Treasury and other shareholders. Each such association shall issue receipts for such payments by the Secretary of the Treasury in such form as may be approved by said Board and such receipts shall be evidence of the interest of the United States in such full paid income shares to the extent of the amount so paid. No request for the repurchase of the full paid income shares purchased by the Secretary of the Treasury shall be made for a period of five years from the date of such purchase, and thereafter requests by the Secretary of the Treasury for the repurchase of such shares by such associations shall be made at the discretion of the Board; but no such association shall be requested to repurchase any such shares in any one year in an amount in excess of 10 per centum of the total amount invested in such shares by the Secretary of the Treasury. Such repurchases shall be made in accordance with the rules and regulations prescribed by the Board for such associations.[10]

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by the law under which it operates; but such conversion shall be subject to such rules and regulations as the Board may prescribe, and thereafter the converted association shall be entitled to all the benefits of this section and shall be subject to examination and regulation to the same extent as other associations incorporated pursuant to this Act."

[10] Subsection (j) is new and was added by section 5 of An Act to Guarantee the Bonds of the Home Owners' Loan Corporation.

[fol. 67] (k) When designated for that purpose by the Secretary of the Treasury, any Federal Savings and Loan Association or member of any Federal Home Loan Bank may be employed as fiscal agent of the Government under such regulations as may be prescribed by said Secretary and shall perform all such reasonable duties as fiscal agent of the Government as may be required of it. Any Federal Savings and Loan Association or member of any Federal Home Loan Bank may act as agent for any other instrumentality of the United States when designated for that purpose by such instrumentality of the United States.[11]

Encouragement of Savings and Home Financing

SEC. 6. To enable the Board to encourage local thrift and local home financing and to promote, organize, and develop the associations herein provided for or similar associations organized under local laws, there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $150,000, to be immediately available and remain available until expended, subject to the call of the Board, which sum, or so much thereof as may be necessary, the Board is authorized to use in its discretion for the accomplishment of the purposes of this section without regard to the provisions of any other law governing the expenditure of public funds. For the purposes of this section the Secretary of the Treasury is authorized and directed to allocate and make immediately available to the Board, out of the funds appropriated pursuant to section 5 (g), the sum of $500,000. Such sum shall be in addition to the funds appropriated pursuant to this section, and shall be subject to the call of the Board and shall remain available until expended.[12]

SEC. 7. The provisions of this Act shall apply to the continental United States, to the Territories of Alaska and Hawaii, and to Puerto Rico and the Virgin Islands.

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[11] Subsection (k) is new and was added by section 5 of An Act to Guarantee the Bonds of the Home Owners' Loan Corporation.

[12] The last two sentences of section 6 are new and were added by section 11 of An Act to Guarantee the Bonds of the Home Owners' Loan Corporation.

Penalties

SEC. 8. (a) Whoever makes any statement, knowing it to be false, or whoever willfully overvalues any security, for the purpose of influencing in any way the action of the Home Owners' Loan Corporation or the Board or an association upon any application, advance, discount, purchase, or repurchase agreement, or loan, under this Act, or any extension thereof by renewal deferment, or action or otherwise, or the acceptance, release, or substitution of security therefor, shall be punished by a fine or not more than $5,000, or by imprisonment for not more than two years, or both.

(b) Whoever (1) falsely makes, forges, or counterfeits any note, debenture, bond, or other obligation or coupon, in imitation of or purporting to be a note, debenture, bond, or other obligation, or coupon, issued by the Home Owners' Loan Corporation or an association; or (2) passes, utters, or publishes, or attempts to pass, utter, or publish, any false, forged, or counterfeited note, debenture, bond or other [fol. 68] obligation, or coupon, purporting to have been issued by the Home Owners' Loan Corporation or an association, knowing the same to be false, forged, or counterfeited; or (3) falsely alters any note, debenture, bond or other obligation, or coupon, issued or purporting to have been issued by the Home Owners' Loan Corporation or an association; or (4) passes, utters, or publishes, or attempts to pass, utter, or publish, as true any falsely altered or spurious note, debenture, bond, or other obligation, or coupon, issued or purporting to have been issued by the Home Owners' Loan Corporation or an association, knowing the same to be falsely altered or spurious, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than five years, or both.

(c) Whoever, being connected in any capacity with the Board or the Home Owners' Loan Corporation or an association (1) embezzles, abstracts, purloins, or wilfully misapplies any moneys, funds, securities, or other things of value, whether belonging to it or pledged or otherwise intrusted to it; or (2) with intent to defraud the Board or the Home Owners' Loan Corporation or an association, or any other body politic or corporate, or any individual, or to deceive any officer, auditor, or examiners of the Board or the Home Owners' Loan Corporation or an association,

makes any false entry in any book, report, or statement of or to the Board or the Home Owners' Loan Corporation or an association, or, without being duly authorized, draws any order or issues, puts forth, or assigns any note, debenture, bond, or other obligation, or draft, mortgage, judgment, or decree thereof, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than five years, or both.

(d) The provisions of sections 112, 113, 114, 115, 116, and 117 of the Criminal Code of the United States (U. S. C., title 18, secs. 202 to 207, inclusive), insofar as applicable, are extended to apply to contracts or agreements of the Home Owners' Loan Corporation and an association under this Act, which, for the purposes hereof, shall be held to include advances, loans, discounts, and purchase and repurchase agreements; extensions and renewals thereof; and acceptances, releases, and substitutions of security therefor.

(e) No person, partnership, association, or corporation shall, directly or indirectly, solicit, contract for, charge or receive, or attempt to solicit, contract for, charge or receive any fee, charge, or other consideration from any person applying to the Corporation for a loan, whether bond or cash except ordinary fees authorized and required by the Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services. Any person, partnership, association, or corporation violating the provisions of this subsection shall, upon conviction thereof, be fined not more than $10,000, or imprisoned not more than five years or both.[18]

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[18] As amended by section 12 of An Act to Guarantee the Bonds of the Home Owners' Loan Corporation. Section 8 (e) read formerly as follows:

"No person, partnership, association, or corporation shall make any charge in connection with a loan by the Corporation or an exchange of bonds or cash advance under this Act except ordinary charges authorized and required by the Corporation for services actually rendered for examination and perfecting of title, appraisal, and like

[fol. 69] Loans to Federal Home Loan Banks

Sec. 9. The Home Owners' Loan Corporation is authorized to buy bonds or debentures of Federal Home Loan Banks upon such terms as may be agreed upon or to loan money to Federal Home Loan Banks upon such terms as may be agreed upon but not to exceed $50,000,000 shall be invested or advanced under this section.[14]

Separability Provision

Sec. 10. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.[15]

Approved June 13, 1933.
Approved as amended, April 27, 1934.

[fol. 70] Appendix

Amendment to the Federal Home Loan Bank Act pertaining to the Home Owners' Loan Corporation contained in an Act to guarantee the bonds of the Home Owners' Loan Corporation.

Sec. 10. The first sentence of section 10 (b) of the Federal Home Loan Bank Act, as amended, is amended by inserting before the period at the end thereof a comma and the following: "unless the amount of the debt secured by

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necessary services. Any person, partnership, association, or corporation violating the provisions of this subsection shall, upon conviction thereof, be fined not more than $10,000, or imprisoned not more than five years, or both."

[14] Section 9 is new and was added by section 9 of An Act to Guarantee the Bonds of the Home Owners' Loan Corporation.

[15] This was section 9 of the Home Owners' Loan Act of 1933, and the same provision is contained in section 15 of An Act to Guarantee the Bonds of the Home Owners' Loan Corporation.

such home mortgage is less than 50 per centum of the value of the real estate with respect to which the home mortgage was given, as such real estate was appraised when the home mortgage was made."

Amendments to the Federal Reserve Act pertaining to the Home Owners' Loan Corporation contained in an Act to guarantee the bonds of the Home Owners' Loan Corporation.

Sec. 7. (a) The first sentence of the eighth paragraph of section 13 of the Federal Reserve Act, as amended, is further amended by inserting before the semicolon, after the words "Federal Farm Mortgage Corporation Act", a comma and the following: "or by the deposit or pledge of bonds issued under the provisions of subsection (c) of section 4 of the Home Owners' Loan Act of 1933, as amended."

(b) Paragraph (b) of section 14 of the Federal Reserve Act, as amended, is further amended by inserting after the words "bonds of the Federal Farm Mortgage Corporation having maturities from date of purchase of not exceeding six months", a comma and the following: "bonds issued under the provisions of subsection (c) of section 4 of the Home Owners' Loan Act of 1933, as amended, and having maturities from date of purchase of not exceeding six months".

Sec. 8. The Federal Reserve banks are authorized, with the approval of the Secretary of the Treasury, to act as depositaries, custodians, and fiscal agents for the Home Owners' Loan Corporation.

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[fol. 79] IN SUPREME COURT OF WISCONSIN

[Title omitted]

ORDER GRANTING LEAVE TO COMMENCE ORIGINAL ACTION—Sept. 14, 1934

And now at this day came the said plaintiffs and filed their petition herein and moved the Court for leave to commence an original action in the Supreme Court for declaratory relief as prayed for in the petition, which motion having been argued by Joseph P. Brazy for petitioner.

It is now here ordered, that leave be granted to commence an original action in this Court, in which the Banking Commission of the State of Wisconsin is plaintiff and the Hopkins Street Building and Loan Association, its officers and directors, are defendants. Petition will stand as complainant and defendants will answer or demur thereto. Cause, by consent of the parties, to be placed on the August 1934 calendar and assigned for argument at the foot of the October assignment.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 80] [Endorsed:] State of Wisconsin, Supreme Court. State ex rel. Peter A. Cleary et al. Plaintiffs, against Hopkins Street Building and Loan Association et al., Defendants. Transcript of Order.

[fol. 81] [Endorsed:] Service admitted this 28th day of September, 1934. J. E. Finnegan, Atty. Gen.; J. E. Martin, Ass't Atty. Gen.; Benj. Ross, of Counsel, by J. P. Brazy. Mailed for filing Sept. 28, 1934.

[File endorsement omitted]

IN SUPREME COURT OF WISCONSIN

[Title omitted]

ANSWER TO PETITION—Filed Sept. 29, 1934

Now come the above named defendants and Hopkins Federal Savings and Loan Association, a national corpora-

tion, successor by conversion to Hopkins Street Building and Loan Association, a Wisconsin corporation, and for answer to the petition herein, admit, deny and allege as follows:

I

Admit the allegations of fact contained in paragraphs numbered one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), thirteen (13) and fourteen (14) of said petition, and admit that the conversion of said Hopkins Street Building and Loan Association into a Federal Savings and Loan Association, and all steps taken in connection therewith, were without consent or authority and over the protests of the Banking Commission of the State of Wisconsin.

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II

Deny the conclusions of law contained in paragraphs numbered nine (9), ten (10) and eleven (11) of said petition.

III

Deny the allegations contained in paragraph numbered twelve (12) of said petition.

IV

Further answering said petition, the defendants allege as follows:

(a) That pursuant to the enactments set forth in paragraph four (4) of the Petition, the said Hopkins Street Building and Loan Association became a member of the Federal Home Loan Bank of Chicago, a bank established under the Federal Home Loan Bank Act, and was a member thereof during all of the times mentioned in said original petition.

(b) That at all of the times set forth in the original petition, or referred to therein, the by-laws of said Hopkins Street Building and Loan Association contained the following provisions and only the following provisions concerning special meetings of the shareholders and notices therefor:

"Article XXXV

Meetings—Regular and Special

"Section 1. The directors shall hold regular meetings on the last Friday of each month at the office of the association at such hour as they shall designate; or at such other place and time upon which they may agree."

"Section 2. Special meetings of the shareholders may be called by the President, and shall be called by him upon written request of twenty stockholders. Special meetings of the directors may be called by the President, and shall be called by him on written request of three directors."

[fol. 83] "Article XXXVI

Legal Notice

"Section 1. Notice of the time and place of holding all stockholders' meetings shall be given by mailing a notice to each stockholder at his last given post-office address not less than ten days before such meeting, or personally serving each member with a written or printed notice of such meeting."

"Section 2. It shall be sufficient notice whenever the association makes any demand upon any member, officer, director, or committeeman to deposit such demand at his last given post-office address, or by personally serving upon him a written or printed notice of such demand."

"Section 3. Every member shall notify the secretary immediately of any change of address."

(c) That as a result of a vote of the Board of Directors of said Hopkins Street Building and Loan Association, at a meeting thereof duly called and held, said association requested the Federal Home Loan Bank of Chicago to make an examination of its affairs and an appraisal of its assets for the purpose of determining whether conversion into a Federal Savings and Loan Association appeared to said Board of Directors and to said Federal Home Loan Bank to be feasible. Thereupon, prior to May 1, 1934, said Federal Home Loan Bank made such examination and appraisal.

(d) That after such examination and appraisal was made by said Federal Home Loan Bank, it appeared to the Board

of Directors of said Hopkins Street Building and Loan Association and to said Federal Home Loan Bank, that such conversion was feasible and advisable.

(e) That thereafter, prior to May 10th, 1934, the Board of Directors of said Hopkins Street Building and Loan Association authorized the calling of a special meeting of the shareholders of said association on May 31st, 1934, for the purpose of submitting the matter of conversion to a vote of the shareholders.

[fol. 84] (f) That thereafter, prior to May 10th, 1934, a meeting of said Hopkins Street Building and Loan Association was duly and legally called in accordance with the by-laws of the Hopkins Street Building and Loan Association, and in accordance with the Laws of the State of Wisconsin, said meeting being called by the President of said Hopkins Street Building and Loan Association, pursuant to the provisions of the by-laws of the said Hopkins Street Building and Loan Association, for the purpose of voting on the subject of said conversion, and that pursuant to the direction of the President of said Hopkins Street Building and Loan Association, a notice of the Secretary of said Hopkins Street Building and Loan Association was mailed to all the shareholders of said Association of record, at their address as shown on the books of said Association, stating the time and place of the meeting, and that the subject of conversion into a Federal Savings and Loan Association would be submitted to vote, which said notice, in words and figures, is as follows, to-wit:

"May 19th, 1934.

To Our Stockholders:

After a preliminary examination by a Federal Examiner this Association has been granted a permit to convert into a Federal Savings and Loan Association.

Now therefore you are hereby notified that a special meeting of the stockholders of the Hopkins Street Building and Loan Association will be held for the purpose of voting upon the question of making an application to convert the aforesaid association into a Federal Savings and Loan Association in accordance with the Home Owners' Loan Act of 1933 and amendments thereto, and such rules, regulations and requirements as may be prescribed by the Federal Home Loan Bank Board. All other matters incidental to

such conversion will likewise be voted upon, including authorization to the officers and directors of your Association to make said application for conversion. To further authorize your officers and directors to do any and all acts and things necessary and execute and deliver any and all documents, papers or agreements which may be necessary or requisite to effect the said conversion and all things incidental thereto.

Said meeting will be held at Schmidt's hall at 2403 West Hopkins Street, in the City and County of Milwaukee, State of Wisconsin, on Thursday, the 31st day of May, A. D. 1934, [fol. 85] at 8:00 o'clock P. M.

This question of conversion is of decided importance to our Association and our shareholders. Every shareholder should attend this meeting and inform himself or herself concerning the question and enter into the discussion. However, in order that there may be sufficient vote represented to meet the requirements of the law necessitating a representation in person or proxy of fifty-one percentum of our shareholders, we have prepared a proxy which is enclosed herewith and which it is urgent that you sign and forward to the secretary of the Association as soon as possible. In case the shares are held jointly by two parties, both should sign the proxy. Your signature or signatures should be witnessed. You understand, of course, that your presence at this meeting releases your proxy.

Your Board of Directors recommends and urges the conversion solely for the benefit of our shareholders.

Hoping that we may have the pleasure of meeting you at this most important event in our history, we are,

Very sincerely yours, Hopkins Street Bldg. & Loan Ass'n., Edw. F. Maertz, Secretary.

Telephone Kilbourn 6255."

(g) That thereafter, on to-wit, May 31st, 1934, said special meeting of the shareholders was held pursuant to notice; that there were at said time 6,949 shares of the capital stock of said association outstanding; that there were represented in person at said meeting, the owners and holders of 2761 shares; that there were represented by proxy at said meeting 3212 shares, all of which proxies were properly executed and filed in the office of the Association; that the plan of conversion, consistent with the

rules and regulations of the Federal Home Loan Bank Board was fully explained to the shareholders, and the resolution prescribed by the Federal Home Loan Bank Board, authorizing such conversion, was unanimously adopted.

(h) That thereafter, on-to-wit, May 31st, 1934, said Hopkins Street Building & Loan Association petitioned the Federal Home Loan Bank Board, on a form prescribed by said Board, for a charter as a converted Association, and on [fol. 86] June 2nd, 1934, a charter was issued by said Federal Home Loan Bank Board to said Association, as a Federal Savings and Loan Association, under the name of Hopkins Federal Savings and Loan Association.

(i) That thereafter, on to-wit, June 4th, 1934, a copy of said charter, certified by the Secretary of the Federal Home Loan Bank Board, under the seal of said Board, was filed for record in the Office of the Register of Deeds for Milwaukee County, Wisconsin, the County in which the office of said Association had been theretofore and was then located, and on June 5th, 1934 said Association notified by mail, the Banking Commissioners of the State of Wisconsin that it had converted into and had become and was a Federal Savings and Loan Association.

(j) That on June 4th, 1934, the Board of Directors of said Hopkins Federal Savings and Loan Association, held a special meeting, as its first meeting as the Board of Directors of said Association as a Federal Savings and Loan Association, and elected officers under the Federal Charter and By-Laws, authorized the transfer of shares of the institution as a Federal Association for its shares as a State Association, authorized the making of direct reduction loans, the modification (with the consent of the borrower) of existing share accumulation loans into direct reduction loans, and authorized the express assumption of its indebtedness as a State Association, authorized the printing of new cards, signs and stationery, and the transaction of future business only as a Federal Association, and said Association thereafter proceeded with the completion of its organization as a Federal Association, and has duly organized and conducted itself as such ever since.

Wherefore, your defendants respectfully pray judgment as follows:

[fol. 87] 1. Declaring said conversion by said Hopkins Street Building and Loan Association, a Wisconsin corporation, into Hopkins Federal Savings and Loan Association, a national corporation, to be lawful and valid.

2. Declaring that the Banking Commission of the State of Wisconsin has no jurisdiction over the defendants or of said Hopkins Federal Savings and Loan Association.

3. For such other and further relief as may be just and equitable in the premises.

Benjamin F. Saltzstein and Edwin J. Gross, Attorneys for Defendants. Lyman W. Sherwood, of Counsel.

Duly sworn to by Edw. F. Maertz. Jurat omitted in printing.

[fol. 88] [Endorsed:] Original. Service admitted this 28th day of September, 1934. J. E. Finnegan, Atty. Gen'l; J. E. Martin, Asst. Atty. Gen.; Benj. Poss, of Counsel, by J. P. Brazy. B. F. Saltzstein, 703 Caswell Block, Milwaukee, Wisconsin.

[File endorsement omitted.]

[fol. 89] Minute entry of argument and submission, Oct. 12, 1934, omitted in printing.

[fol. 90] In Supreme Court of Wisconsin

[Title omitted]

Request for Additional Briefs—Oct. 19, 1934

The Court requests that counsel for the parties exchange and file additional briefs, within fifteen days, upon the following questions:

(1) What if any effect upon the ability of a Wisconsin corporation to transmute itself into a federal corporation has the power reserved to the legislature by section 1 of Article XI of the constitution of the state of Wisconsin to alter or repeal general laws and special acts relating to corporations?

(2) Are the powers conferred upon building and loan associations by chapter 215, Wisconsin statutes, banking powers or privileges within the meaning of that term as used in Article XI, section 1?

[fol. 91] IN SUPREME COURT OF WISCONSIN

PETER A. CLEARY ET AL., Plaintiffs,

vs.

HOPKINS STREET BUILDING AND LOAN ASSOCIATION, a Wisconsin Corporation, et al., Defendants

Original Action—Declaratory Relief—Opinion by Justice Fairchild

JUDGMENT—Dec. 11, 1934

This cause came on to be heard on the answer to the complaint heretofore filed herein and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court that the writ issue as prayed for in the complaint.

[fol. 92] IN SUPREME COURT OF WISCONSIN

Nos. 212, 214, 215, August Term, 1934

STATE EX REL. PETER A. CLEARY et al., Plaintiffs,

v.

HOPKINS STREET BLDG. & LOAN ASS'N, a Wis. Corporation, et al., Defendants

RELIANCE BLDG. & LOAN ASS'N, a Corporation, Respondent,

v.

PETER A. CLEARY et al., as Banking Commission et al., Appellants

NORTHERN BLDG. & LOAN ASS'N, a Corporation, Respondent,

v.

PETER A. CLEARY et al., as Banking Commission et al., Appellants.

Appeal from two judgments of the circuit court for Milwaukee county: Charles L. Aarons, Circuit Judge. Reversed.

An original action commenced pursuant to leave granted by this court. Writ granted.

OPINION—Filed Dec. 11, 1934

The Reliance Bldg. & Loan Ass'n and the Northern Bldg. & Loan Ass'n each brought its action to restrain the banking commission and supervisor of building and loan asso- [fol. 93] ciations from interfering with the plaintiffs in their attempt to convert their association from a state building and loan association into a federal savings and loan association. On September 14, 1934, the banking commission, with leave of this court, began an original action against the Hopkins Street Bldg. & Loan Ass'n to restrain the association, its officers and agents from operating as a federal savings and loan association, to have defendant's attempted conversion into such an association declared null and void, and to compel the officers of said association to operate it as a Wisconsin building and loan association or to wind up its affairs as such an association in the manner provided by the statutes of this state, on the ground that the Hopkins Street Bldg. & Loan Ass'n is under the jurisdiction of the banking commission of the state of Wisconsin. The cases of Reliance Bldg. & Loan Ass'n and Northern Bldg. & Loan Ass'n were tried together in the circuit court for Milwaukee county before the court without a jury. The petition for leave to commence the original action in this court stands as the complaint. There was an appearance in this action by all of the named defendants and for "Hopkins Federal Savings & Loan Ass'n, a national corporation, organized pursuant to the acts of congress and the laws of the United States of America, and successor by conversion to Hopkins Street Bldg. & Loan Ass'n." An answer was interposed by the Hopkins Federal Savings & Loan Ass'n describing the proceedings taken and alleging the legality and sufficiency thereof in the matter of converting that association into a federal savings and loan association, a corporation under the government of the United States, and praying for a rule [fol. 94] that the banking commission of the state of Wisconsin has no jurisdiction of the defendant.

[fol. 95] FAIRCHILD, J.:

The Reliance Bldg. & Loan Ass'n and the Northern Bldg. & Loan Ass'n respondents on this appeal, and the

Hopkins Street Bldg. & Loan Ass'n defendant in the original action here, are each Wisconsin corporations organized under the provisions of ch. 215, Stats. This chapter places the control and supervision of building and loan associations under the banking commission and authorizes the commission to take possession of and liquidate such an association when it shall appear that it is violating its charter or any of the laws of the state.

On July 22, 1932, congress enacted the Federal Home Loan Bank Act. By virtue of the provisions of this act, state building and loan associations were eligible to membership and, under certain conditions and restrictions, entitled to borrow from a Federal Home Loan Bank. The Wisconsin legislature, on July 10, 1933, by its enactment of sec. 215.07(8), Stats., authorized Wisconsin building and loan associations, with the approval of the commissioner of banking, to become members of and borrowers from the Federal Home Loan Bank. Each of the building and loan associations here involved became members of the Federal Home Loan Bank. On June 13, 1933, there was enacted by the congress of the United States the Home Owners' Loan Act section 5 of which authorizes the Federal Home Loan Bank Board to provide for the organization of associations to be known as Federal Savings & Loan Ass'ns and to issue charters therefor; and on April 27, 1934, by amendment to the Home Owners' Loan Act, it was provided:

"Sec. 5(i) Any member of the Federal Home Loan Bank may convert itself into a Federal Savings & Loan Association under this act upon a vote of 51 per centum or more of the votes cast at a legal meeting called to consider such action; but such conversion shall be subject to such rules [fol. 96] and regulations as the board may prescribe, and thereafter the converted association shall be entitled to all the benefits of this section and shall be subject to examination and regulation to the same extent as other associations incorporated pursuant to this act."

Following the passage of the amendment just referred to and without further consent or authority of the state, application was made by the three associations to the Federal Home Loan Bank Board for permission to convert themselves into federal savings and loan associations under the

provisions of sec. 5(i) of the Home Owners' Loan Act of 1933 as amended. In each case the Federal Home Loan Bank Board granted the permission. With reference to the Hopkins Street Bldg. & Loan Ass'n the banking commission undertook to prevent the proposed conversion but in compliance with the order of the circuit court for Milwaukee county, desisted from such attempt and the association accepted a charter from the Federal Home Loan Bank Board and has since held itself out to be a savings and loan association free from the jurisdiction and control of the banking commission of this state. An original action is brought against the association seeking to have the attempted conversion declared null, void, and of no effect. The Reliance Bldg. & Loan Ass'n and the Northern Bldg. & Loan Ass'n each began an action to restrain the banking commission from interfering with its proposed conversion. In those cases the banking commission interposed counterclaims praying for declaratory relief similar to that sought in the original action in this court and an injunctional order to prevent the proposed conversion. This is briefly a description of the record in the three matters and they present identical questions. The learned judge who tried the two cases in which judgment was entered below was [fol. 97] of the opinion that congress had power to incorporate federal savings and loan associations; that the language of sec. 5(i) of the Home Owners' Loan Act of 1933 as amended April 27, 1934, did not imply the necessity of consent by the state to the proposed conversation of a state loan association into a federal loan association; and that congress had the power to authorize the conversion without the consent of the state.

The cause was first submitted upon arguments and briefs dealing to a large extent with the questions of whether congress has power to incorporate federal savings and loan associations and as to the power of congress to supersede the authority of the state over building and loan associations created by the state and to invest such corporations with corporate power to transmute themselves into federal savings and loan associations. We have since been favored by the contending parties with supplemental briefs in which are able discussions of the reservation by the state of power over corporate charters. Since then we have again examined the questions raised. We are con-

vinced that the precise question before us relates to the power of a building and loan association, organized under and subject to the laws of the state of Wisconsin, to convert itself into a savings and loan association under the federal act. While the other questions are well within the limits of proper discussion as outlined by the issues, it is worthy of emphasis that all other questions are incidental to this controlling question and such reference to them as may be made is in aid of the determination of the actual corporate powers of a state organized building and loan association to accomplish transmutation. This being true, we will therefore consider whether the respondents, by reason [fol. 98] of reason of provisions in their charters or the laws of their creator, have any such power.

The respondents were created by the state of Wisconsin at a time when without question the state had plenary power to create and to control the powers of these corporations. They are not banks; they have not banking powers or privileges under our state laws. Leahy v. National Bldg. & Loan Ass'n, 100 Wis. 555, 76 N. W. 625; Julien v. Model Bldg. & Investment Ass'n, 116 Wis. 79, 92 N. W. 561; First Nat. Bank v. County of Dawson, 66 Mont. 321, Pac. —; Lomb v. Pioneer Savings & Loan Co., 106 Ala. 591, So. —; Hoenig v. Huntington Nat. Bank of Columbus, 59 Fed. (2d) 479, 48 L. ed. 560; Mercantile Nat. Bank v. Hubbard, 99 Fed. 465, Ch. 215 Stats. 1933. Their charters do not authorize them to divest themselves of the corporate charter conferred upon them by the laws of the state. They have only the powers emanating from the state. These powers must be used as prescribed by the state and with due consideration for the contractual rights between the stockholders and the corporation existing by reason of state law and the charter of the corporation. Under the declared law of the state, we are bound to hold that a corporation organized under our general incorporation laws has not the power to divest itself of the corporate character derived from this sovereign state by accepting a charter from any other sovereign government. Our constitution, sec. 1, Article XI, provides:

"All general laws or special acts, enacted under the provisions of this section (section authorizing the creation of corporations) may be altered or repealed by the legislature at any time after their passage."

The people of our state thereby vested a reserve power over charters of corporations in the legislature. The idea that any other body or sovereign, a stranger to the contract, or that the corporation alone may deprive the state [fol. 99] of this power is foreign to the plain meaning of the language used in the constitution with relation to that subject. This provision of our constitution and similar provisions to be found in the constitutions of other states were adopted for the purpose of overcoming in part the effect of the decision of the United States Supreme Court in Trustees of Dartmouth College v. Woodward, 4 Wheaton 518, 4 L. ed. 629. In that case it was held that a corporation created by a state became a separate corporate entity and subject to control by the state to the extent only that citizens of the state were subject to control under he constitution; that any amendment, alteration or repeal of its charter which withdrew or impaired the obligations of the charter was in violation of section 10 Article I of the constitution of the United States which provides: "No state shall * * * pass any * * * law impairing the obligations of contracts."

The nature of the power expressly reserved by the Wisconsin constitutional provisions has been dealt with in many cases both in state courts and in the courts of the United States. A reference to these cases shows the extent of this power and in its proper use in controlling charters issued to corporations. In West Wisconsin R. R. Co. v. Board of Supervisors of Trempealeau Co., 35 Wis. 257, 270, referring to sec. 1, Article XI of the constitution, the court said:

"The object and historical origin of the provision in the constitution of this state are matters known to all professional men. They were, through this paramount authority, to retain and secure to the state full power and control over corporate franchises, rights and privileges which it might grant—a power and control which the state was in a measure deprived of by the federal constitution, as that instrument had been interpreted in the celebrated Dartmouth College case."

It was also considered in another celebrated case, The [fol. 100] Attorney General v. Railroad Companies, 35 Wis. 425, 574, where the court said:

"And, by force of the constitutional power reserved and of the uniform construction and application of it, the rule of the Dartmouth College case, as applied to corporations, never had a place in this state, never was the law here. The state emancipated itself from the thraldom of that decision, in the act of becoming a state; and corporations since created here have never been above the law of the land.

"Subject to this reserved right, and under the rule in the Dartmouth College case, charters of private corporations are contracts, * * * The material property and rights of corporations should be inviolate, as they are here; but it comports with the dignity and safety of the state that the franchises of corporations should be subject to the power which grants them, that corporations should exist as the subordinates of the state, which is their creator, durante bene placito.

"This is a question of state law, not of federal law. We give full scope to the federal constitution as interpreted by the federal courts, but we stand clearly outside of both. This question could be brought within the Dartmouth College rule, not by interpretation of the federal constitution, but by interpretation of the state constitution only. That is our function. We accept the construction of the federal constitution as the federal courts give it. But we give construction to our own constitution for ourselves. And there we might well rest."

The court pointed out that the exercise of the reserve power had been sanctioned by the federal and other state courts and cited cases.

While the federal constitution contains no power reserving to congress the right to amend, alter or modify the charters of corporations created by it, congress has in numerous instances reserved the power in the act by which corporations were created. In Union Pacific R. R. Co. v. United States, 99 U. S. 700, 25 L. ed. 496, the Supreme Court of the United States had under consideration the act of congress incorporating the Union Pacific Railroad Company, which act contained the following reservation: "Congress may at any time alter, amend or repeal this act." Considering this in connection with a former act of congress, the court said:

"We are of the opinion that congress not only retains, [fol. 101] but has given special notice of its intention to retain, full and complete power to make such alterations and amendments of the charter as come within the just scope of legislative power. That this power has a limit, no one can doubt. All agree that it cannot be used to take away property already acquired under the operation of the charter, or to deprive the corporation of the fruits actually reduced to possession of contracts lawfully made; but, as was said by this court, through Mr. Justice Clifford, in Miller v. The State, 15 Wall. 498, 21 L. ed. 104, 'It may safely be affirmed that the reserve power may be exercised, and to almost any extent, to carry into effect the original purposes of the grant, or to secure the due administration of its affairs, so as to protect the rights of stockholders and of creditors, and for the proper disposition of its assets.'"

See also Close v. Greenwood Cemetery, 107 U. S. 466, 476, L. ed. —; Tomlinson v. Jessup, 82 U. S. 454, 21 L. ed. 204.

In Huber v. Martin, 127 Wis. 412, 105 N. W. 1031, 105 N. W. 1035, a law was held unconstitutional under which a mutual insurance company attempted to convert itself into a stock company pursuant to an act of the legislature of the state of Wisconsin permitting it to do so at the option of two-thirds of its existing policy holders, representing not less than one-half of its outstanding insurance. It was sought to sustain this action of the legislature under sec. 1 of Article XI as an exercise of the power thereby reserved. It was argued that since the legislature had power to provide for the dissolution of a corporation, it might also provide for the disposition of its assets to a successor corporation. The court said:

"That right of the corporation to hold its property in harmony with that situation, and the rights of the members to have the same so held and administered, were property interests resting on contractual obligations and so within the guaranty of the state constitution as regards the passage of laws impairing the obligations of contract, sec. 12, Art. I, Const. of Wis., and that of the national constitution as regards the deprivation of property without due process of law, or denying to persons the equal protection of the laws. XIVth Amend. U. S. Const. . . . The act of the legislature in question, in terms or in effect,

authorizes the appropriation of the property of one private corporation and the equitable interests therein of the members in violation of the corporate charter rights of the for-
[fol. 102] mer corporation, and in defiance of the wishes of such of its members as do not choose to consent thereto."

The matter was further dealt with in State ex rel. Northern Pacific R. Co. v. Railroad Comm. 140 Wis. 145, 157, 121 N. W. 919. In that case the court said:

"The reserve power stops short of the power to divest vested property rights, and is embodied in the state constitution for the purpose of enabling the state to retain control over corporations, and must be construed in connection with the other provisions of the constitution to the effect that private property shall not be taken for public use without compensation. Moreover, the power to alter or amend is a reserve power in the interest of the state to modify or repeal its own contract with the corporation. Tomlinson v. Jessup, 82 U. S. 454; State v. C. & N. W. R. Co. 128 Wis. 449, 108 N. W. 594."

There can be no doubt but that it was intended by the framers of the constitution to reserve in the state the power to alter or repeal the charter of any corporation created by the legislature. The constitution having thus limited the power of the legislature, it would seem to follow that the legislature is without authority to divest itself of the power reserved to it by the constitution. But if it should be held that the legislature has such power, it is still constitutionally disabled from authorizing any part of the stockholders of a corporation created by it, to impose a new charter upon non consenting members of the corporation. A fundamental and radical change in the purpose of a corporation cannot be accomplished by an act of the corporation over the dissent of a single stockholder. Martin Orchard Co. v. Fruit Growers C. Co. 203 Wis. 97, 233 N. W. 603; Huber v. Martin, supra; 7 Ruling Case Law, p. 97. And there is a fundamental and material difference between being a member of a building and loan association over which the representatives chosen by the people of this state have the reserve power of control and being a member of
[fol. 103] one created by the legislative body of a different sovereign power.

Our legislature has enacted laws covering the entire subject matter of control of these associations and has molded them to the needs of the communities, regulating the manner by which they may come into existence and continue in business. Ch. 215 Stats., 1933, expressly regulates the powers conferred upon them. If it be urged that sec. 215.07 (8), Stats., reading:

"With the approval of the commissioner, any association may borrow money from the federal home loan bank upon such terms and for such time as the laws and rules of such federal home loan bank may prescribe, the provision in subsection (2) of section 215.07 as to the one-year time limit and as to the amount that may be borrowed, to the contrary notwithstanding."

authorizes a building and loan association organized under the provisions of chapter 215 to divest itself of its charter as a state corporation, the answer is that sec. 215.07 (8) confers no such power nor was it intended to confer such power. Sec. 215.07(2), Stats. 1933, provides:

"To borrow money for temporary purposes, not inconsistent with the objects of the association, and issue its evidence of indebtedness therefor, but for no longer term than one year and not exceeding in the aggregate amount one-fifth of the assets on hand."

Sec. 215.07(8) is a provision authorizing building and loan associations, as to loans made from the federal home loan bank, to waive the limitation upon the power to borrow found in sec. 215.07(2). It does not attempt to deal with the power of a building and loan association to sever the ties which bind it to the state from which it derives its charter. To hold that such power was conferred by sec. 215.07(8) would be clear judicial legislation in a matter vitally important to the state involving large questions of public policy. Since respondents' charters do not provide for transmutation and no authority emanating from the [fol. 104] state of Wisconsin accords them the privilege, or attempts to confer corporate power upon them to transmute, two questions are suggested. First, has congress by enactment of the Home Owners' Loan Act attempted to supersede the authority of the state and actually to invest re-

spondents with corporate power essential to a transmutation? Second, if it be found that it was the purpose of congress by that act thus to increase respondents' corporate powers, then, has congress the power to accomplish this result? We are not treating specifically the second question for reasons already set forth.

As to the first question, we are of the opinion that the Federal Home Owners' Loan Act does not affect the state's right to charter corporations and retain control over them under the state constitution from the date of their beginning until in some lawfully prescribed way they pass out of existence as state corporations. Nor does that act attempt to invest the state corporations with any power not granted to them by the state which created them. The act was intended to be administered in forty eight states, and applies to corporations operating under different degrees of state control and with different powers. It does not purport to invest the various state corporations with any new or different corporate powers. It does no more than to afford consent applicable to corporations having the power to transmute. If a state, either in the original charter of its corporation or by subsequent legislation, permitted such a transmutation as is proposed here upon consent of 75 per centum of the stockholders, such a corporation could not change into a federal corporation upon a vote of 51 per centum of the stockholders. Nor would a state statute pro- [fol. 105] viding a minimum below 51 per centum render the association acceptable. The 51 per centum provision set up in the federal act may readily be interpreted as the manner of consenting by the membership which the federal government requires to a transmutation. The opportunity is thus afforded to those who are so situated that they can accept the offer if it be deemed by them to be to their advantage. It does not appear to be a supplanting of the requirements in the charter of a corporation. Were it otherwise, the exercise of such a power would do two things; first, it would enable a building and loan association to escape from regulatory control reserved by the state, and second, it would divest stockholders of their rights in the corporation under state law and substitute therefor rights alleged to be equivalent in a corporation organized under the laws of the United States. As pointed out elsewhere in this opinion,

this would raise serious constitutional questions, for a corporate charter is not only contractual between the state and its creature corporation, but it is also contractual with respect to the rights of a stockholder in a corporation. Huber v. Martin, supra.

Any method under which a state association seeks to transfer itself into a federal group without consideration of the contractual relation existing between it and the state would seem to be ineffective. It has only the powers emanating from the state and these must be used as prescribed by the state with due consideration for the contractual rights between stockholders and the association existing by reason of state laws and the charter of the corporation.

We will not review all the cases cited by respondents in support of the claim of right to transmutation, but our at- [fol. 106] tention is called to Casey v. Galli, 94 U. S. 673, 24 L. ed. 168, and particular emphasis is placed on the statement in the opinion: "It was as competent for congress to authorize the transmutation as to create such institutions originally." A receiver of a national bank, which by an act of congress had been converted from a state bank without an enabling act by the state, brought suit against a stockholder upon his stockholder's liability. A plea in abatement based upon the failure to obtain the consent of the state was held bad. That the quoted words were intended to be a complete statement of a rule of law to the exclusion of all qualifications may well be doubted, but even if such was the intention, we cannot recognize the result in that case as determining that the federal government may invade the jurisdiction of the state government and appropriate for its own purposes the agencies devised by the state for the welfare of its citizens or interfere against the wish of the state with respect to contracts existing between the state and corporations of its own creation. Whatever power congress may have over transmutation of banking corporations, it may at least be reasonably questioned whether it has such power with respect to other domestic corporations organized under state law for the state's purposes in providing for the welfare of its citizens. It ought also to be said that aside from the fact that the Home Owners' Loan Act does not deal with the general subject of banking, as did the law involved in the Galli case, it is otherwise quite different from the statute there involved and

construed. That act authorized state banks to become national banks. 13 U. S. Stats. at Large, 112, 113, provided "that any bank incorporated by special law, or any banking institution organized under a general law of any state, [fol. 107] may, by authority of this act, become a national association under its provisions. * * *" It is specifically provided that "the articles of association and the organization certificate required by this act may be executed by a majority of the directors of the bank or banking institution; and said certificate shall declare that the owners of two-thirds of the capital stock have authorized the directors to make such certificate and to charge and convert the said bank or banking institution into a national association under this act." A majority of the directors are thereafter specifically given the power to execute all necessary papers essential to a perfection of the organization as a national association. This act constituted an unmistakable investiture of corporate powers upon state banks. If our conclusion that the Home Owners' Loan Act operates merely as an authority or consent, or definition of the conditions under which transmutation will be permitted, so far as the federal government is concerned, without purporting to increase corporate powers of state corporations, is not clearly sustained by the act, it must at least be said to be ambiguous and to be open to this construction. We think it should be so construed in order to avoid a number of serious constitutional objections which may here be recited without determining their validity, but merely as an aid to construction. The first is the objection that since Wisconsin, by power reserved in its constitution, has retained control over corporations organized under its laws, and since the state undoubtedly had plenary powers, both of organization and control, prior to this act, it cannot be ousted by any act of congress from these powers; that since a building and loan association is not a banking institution, the case of Casey v. Galli, [fol. 108] supra, has no application; that the change in the corporate charter permitting conversion upon a vote of 51 per centum of the stockholders would be an impairment of the contract rights of stockholders in a Wisconsin corporation. That these are serious constitutional objections must be conceded, whatever their proper solution may be. Further than this, an attempt on the part of congress to interfere with the control of corporations organized under state

laws, and to invest them with new powers, must certainly be regarded as a very sweeping and fundamental innovation. In view of these considerations, the act itself should contain the clearest sort of language to warrant the contention asserted by respondents. This we do not find.

Respondents call our attention to Ex Parte Worcester National Bank, 279 U. S. 347. From the opinion of the United States Supreme Court in that case, it appears that the Supreme Judicial Court of Massachusetts held that under the constitution and laws of that state, a state bank could change its organization to that of a federal bank without any authority given by the state to make the change. That decision rests definitely upon a determination by the Supreme Judicial Court of Massachusetts of a question of state law. We shall not attempt an analysis of the decision of the Massachusetts court. The question before us is one of state law and in answering that question we must proceed in accordance with the existing law of the state of Wisconsin.

It is our conclusion that respondents have no power to transmute, and that any purported efforts in that direction are void for want of this power. It is assumed that if the act of congress is to be given the construction contended for by respondents, it results not in the creation of a new [fol. 109] corporation but in the transfer of its allegiance by the state corporation, from the sovereignty of its creation, to the federal government. It has not been thought necessary to consider the possibility that congress, by this act, has created a new corporation, because in that event, there being no provision in the charter of the original corporation or in the laws of Wisconsin for a transfer of its property, the corporation would find itself a naked legal entity without any means of carrying out the purposes of the transfer.

By the Court—Judgments entered in the circuit court are reversed, causes remanded with directions to enter judgment in favor of the banking commission on its counterclaim. In the original action in this court, let the writ issue.

STATE OF WISCONSIN,
Milwaukee County, ss:

AFFIDAVIT OF SERVICE

Arthur A. Schumann, being first duly sworn on oath deposes and says; that he is a citizen and resident of said County of Milwaukee, Wisconsin, over 21 years of age, not related to either of the within named parties, nor in any manner interested in said case, and that at the City of Milwaukee, County and State aforesaid on the 27th day of February A. D. 1935, he served the annexed Writ of Injunction on the therein named defendant Hopkins Street Building and Loan Association, a Wisconsin corporation, known by him to be the identical defendant corporation mentioned in said Writ of Injunction, by then and there delivering to and leaving with Edw. F. Maertz, personally, President of the aforesaid defendant corporation Hopkins Street Building and Loan Association, and whom he knows to be such person and officer a true copy thereof;

That at the City of Milwaukee, County and State aforesaid on the 27th day of February A. D. 1935, he served the annexed Writ of Injunction on the therein named defendant Edw. F. Maertz, as President and Director of the aforesaid defendant corporation Hopkins Street Building and Loan Association, personally, known by him to be the identical defendant mentioned in said Writ of Injunction, by then and there delivering to and leaving with him personally a true copy thereof;

That at the City of Milwaukee, County and State aforesaid on the 27th day of February A. D. 1935, he served the annexed Writ of Injunction on the therein named defendant N. F. Remmel, as Vice President and Director of the aforesaid defendant corporation Hopkins Street Building and Loan Association, personally, known by him to be the identical defendant mentioned in said Writ of Injunction, by then and there delivering to and leaving with him personally a true copy thereof;

That at the City of Milwaukee, County and State aforesaid on the 27th day of February A. D. 1935, he served the annexed Writ of Injunction on the therein named defend-

ant A. J. Kitzerow, as Secretary and Director of the aforesaid defendant corporation Hopkins Street Building and Loan Association, personally, known by him to be the identical defendant mentioned in said Writ of Injunction, by then and there delivering to and leaving with him personally a true copy thereof;

That at the City of Milwaukee, County and State aforesaid on the 28th day of February A. D. 1935, he served the annexed Writ of Injunction on the therein named defendant R. J. Teske, as Treasurer and Director of the aforesaid defendant corporation Hopkins Street Building and Loan Association, personally, known by him to be the identical defendant mentioned in said Writ of Injunction, by then and there delivering to and leaving with him personally a true copy thereof;

That at the City of Milwaukee, County and State aforesaid on the 28th day of February A. D. 1935, he served the annexed Writ of Injunction on the therein named defendant Ed. Kieckbusch, as Director of the aforesaid defendant corporation Hopkins Street Building and Loan Association, personally, known by him to be the identical defendant mentioned in said Writ of Injunction, by then and there delivering to and leaving with him personally a true copy thereof;

[fol. 111] That at the City of Milwaukee, County and State aforesaid on the 27th day of February A. D. 1935, he served the annexed Writ of Injunction on the therein named defendant Arthur J. Techel, as Director of the aforesaid defendant corporation Hopkins Street Building and Loan Association, personally, known by him to be the identical defendant mentioned in said Writ of Injunction, by then and there delivering to and leaving with him personally a true copy thereof;

That at the City of Milwaukee, County and State aforesaid on the 27th day of February A. D. 1935, he served the annexed Writ of Injunction on the therein named defendant Chas. Hafemann, Jr., as Director of the aforesaid defendant corporation Hopkins Street Building and Loan Association, personally, known by him to be the identical defendant mentioned in said Writ of Injunction, by then and there delivering to and leaving with him personally a true copy thereof;

That at the City of Milwaukee, County and State aforesaid on the 27th day of February A. D. 1935, he served the annexed Writ of Injunction on the therein named defendant Arthur H. Fluck, as Director of the aforesaid defendant corporation Hopkins Street Building and Loan Association, personaly, known by him to be the identical defendant mentioned in said Writ of Injunction, by then and there delivering to and leaving with him personally a true copy thereof;

And at the same time exhibiting to each of them personally the original Writ of Injunction with the signature of Arthur A. McLeod, Clerk of the Supreme Court of the State of Wisconsin, and also at the same time exhibiting to each of them personally the official seal of the Supreme Court of the State of Wisconsin;

And at the time of said services he endorsed his name and date of service on the copies so served.

Arthur A. Schumann.

Service	$5.00
Travel	1.60
	$6.60

Subscribed and sworn to before me this 1st day of March, A. D. 1935.

Bernard S. Quigley, Notary Public, Milwaukee County, Wis. (Notarial Seal.)

My commission expires May 2nd, 1937.

[fol. 112] In Supreme Court of Wisconsin

[Title omitted]

Writ of Injunction

The State of Wisconsin to the above named Defendants, and each of them, Greetings:

Whereas, this Court has determined by its decision filed herein on December 11, 1934, that the attempted conversion by the above named Hopkins Street Building and Loan Association, a Wisconsin corporation, into a federal savings and loan association is null, void and of no effect, and that

said association is subject to the jurisdiction of the Banking Commission of the State of Wisconsin as provided by the statutes of the State of Wisconsin; and whereas, the said decision orders the issuance of a writ of injunction as hereinafter set forth:

We, therefore, in consideration of the premises, strictly command that you, and each of you, operate said Hopkins Street Building and Loan Association, as a Wisconsin building and loan association, under the laws of the State of Wisconsin, and under the direction and jurisdiction of the Banking Commission of the State of Wisconsin, as pro-
[fols. 113 & 114] vided by the statutes of the said State.

We further command that you, and each of you, do absolutely refrain and desist from operating said Hopkins Street Building and Loan Association as a federal savings and loan association.

Witness, the Honorable, the Justices of the Supreme Court of the State of Wisconsin, the 19th day of December, A. D. 1934.

Arthur A. McLeod, Clerk of the Supreme Court of the State of Wisconsin. (Seal.)

[fol. 115] BFS:ZS—12/18/34.

IN SUPREME COURT OF WISCONSIN

[Title omitted]

NOTICE OF MOTION FOR REHEARING—Filed Dec. 19, 1934

Please take notice that the defendants, Hopkins Street Building and Loan Association, a Wisconsin corporation, Edw. F. Maertz, N. F. Remmel, A. J. Kitzerow, and R. J. Teske, as President, Vice-President, Secretary and Treasurer, respectively, and Edw. F. Maertz, N. F. Remmel, A. J. Kitzerow, R. J. Teske, Ed. Kieckbush, Arthur J. Techel, Chas. Hafemann, Jr., and Arthur H. Fluck, as Directors of said Hopkins Street Building and Loan Association, above named, are filing with the Clerk of the above named Court, a motion for rehearing, a copy of which is hereto annexed.

Dated December 18th, 1934.

B. F. Saltzstein, E. J. Gross, Attorneys for Defendants; Lyman W. Sherwood, of Counsel.

To J. E. Finnegan, Attorney General, John E. Martin, Assistant Attorney, Benjamin Poss, Attorney for Plaintiff, Joseph P. Brazy, of Counsel.

[fol. 116] BFS:ZS—12/18/34.

IN SUPREME COURT OF WISCONSIN

[Title omitted]

MOTION FOR REHEARING—Filed Dec. 19, 1934

Now come, Hopkins Street Building and Loan Association, a Wisconsin corporation, Edw. F. Maertz, N. F. Remmel, A. J. Kitzerow, and R. J. Teske, as President, Vice-President, Secretary and Treasurer, respectively and Edw. F. Maertz, N. F. Remmel, A. J. Kitzerow, R. J. Teske, Ed. Kieckbush, Arthur J. Techel, Chas. Hafemann, Jr., and Arthur H. Fluck, as Directors of said Hopkins Street Building and Loan Association, defendants herein, by their respective undersigned attorneys of record herein, and jointly and severally move for a rehearing in the above entitled action.

Dated December 18th, 1934.

B. F. Saltzstein, E. J. Gross, Attorneys for Defendants; Lyman W. Sherwood, of Counsel.

[fol. 117] [Endorsed:] Original. Received copy Dec. 18, 1934. J. E. Finnegan, Atty. Gen.; John E. Martin, Asst. Atty. Gen., Benj. Poss, of Counsel, by Joseph P. Brazy. B. F. Saltzstein, 703 Caswell Block, Milwaukee, Wisconsin.

[File endorsement omitted.]

[fol. 118] IN SUPREME COURT OF WISCONSIN

[Title omitted]

ORDER STAYING PROCEEDINGS—Dec. 19, 1934

The said defendants having moved for a rehearing in this cause, it is now here ordered that all proceedings be stayed in this Court until the final determination of said motion.

[fol. 119] IN SUPREME COURT OF WISCONSIN

[Title omitted]

ORDER DENYING MOTION FOR REHEARING—Feb. 5, 1935

The court being now sufficiently advised of and concerning the motion of the said defendants for a rehearing in this cause, it is now here ordered that said motion be, and the same is hereby, denied with $25.00 costs and costs of motion to be taxed in one case only.

[fol. 120] IN SUPREME COURT OF WISCONSIN

[Title omitted]

ORDER STAYING ISSUANCE OF WRIT—Feb. 6, 1935

Ordered, that upon giving of a bond of $1,000.00, to be approved by the Chief Justice, issuance of the peremptory writ of mandamus in this cause be stayed pending removal of cause to the United States Supreme Court.

[fol. 121] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 122] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION AS TO PRINTING RECORD—Filed May 15, 1935

Comes now, Hopkins Federal Savings and Loan Association, a corporation organized and existing under and by virtue of the laws of the United States of America, by conversion of Hopkins Street Building and Loan Association, a Wisconsin corporation; Edw. F. Maertz, N. F. Remmel, A. J. Kitzerow and R. J. Teske, as President, Vice-President, Secretary and Treasurer, respectively, and Edw. F. Maertz, N. F. Remmel, A. J. Kitzerow, R. J. Teske, Ed. Kieckbusch, Arthur J. Techel, Chas. Hafemann, Jr., and Arthur H. Fluck, as Directors of said Hopkins Federal Savings and Loan Association, and their respective succes-

sors in office, appellants in the above entitled cause, and adopt their assignments of error as their statement of the points to be relied upon, and state that the whole of the [fols. 123 & 124] record, as filed, is necessary for the consideration of the case.

Dated May 14, 1935.

Emery J. Woodall, Attorney for Appellants; B. F. Saltzstein, E. J. Gross, Lyman W. Sherwood, of Counsel, by E. J. Woodall.

Service acknowledged this 14th day of May, A. D. 1935.

Benj. Poss, Attorney for Appellees.

[fols. 125 & 126] Service acknowledged this 9 day of May, A. D. 1935.

J. E. Finnegan, Attorney Gen., Attorney for Appellees.

[fol. 127] [File endorsement omitted.]

[fol. 128] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—June 3, 1935

Appeal from the Supreme Court of the State of Wisconsin.

Treating the appeal papers herein from the Supreme Court of the State of Wisconsin as an application for a writ of certiorari;

On consideration whereof, it is ordered by this Court that the said application for writ of certiorari be, and the same is hereby, granted.

Endorsed on cover: File No. 39,598. Wisconsin, Supreme Court. Term No. 55. Hopkins Federal Savings and Loan Association, etc., et al., Appellants, vs. Peter A. Leary, S. N. Shafer and H. F. Ibach, Constituting the Banking Commission of the Banking Department of the State of Wisconsin. Filed May 15, 1935. File No. 970; 55 O. T. 1935.